

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PRESTON WILSON, an individual,

Plaintiff,

v.

GERARDO PONCE and JANE/JOHN DOE
PONCE, individually and as a marital
community; and PENSKE TRUCK LEASING
CO., LP., OF WASHINGTON, a foreign
limited partnership,

Defendants.

NO.

**NOTICE OF REMOVAL BY
DEFENDANTS**

(KING COUNTY SUPERIOR COURT
CAUSE NO. 21-2-02771-3SEA)

✓CLERK'S ACTION REQUIRED

TO: CLERK OF THE COURT;

AND TO: PLAINTIFF PRESTON WILSON;

AND TO: J.D. SMITH, AND LAW OFFICE OF J.D. SMITH, PLLC,
COUNSEL FOR PLAINTIFF

Pursuant to the provisions of 28 U.S.C. § 1441(a) and (b), 28 U.S.C. § 1446, and 28
U.S.C. § 1332, Defendants hereby remove the above-captioned case from the Superior Court of
King County, Washington, where it is currently pending, to the United States District Court for
the Western District of Washington at Seattle.

NOTICE OF REMOVAL BY DEFENDANTS - 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

I. STATEMENT OF FACTS

A. Underlying Incident

Plaintiff Preston Wilson (“Plaintiff”) alleges that he was injured after a motor vehicle accident with Defendant Gerardo Ponce in Seattle, Washington on October 4, 2019. *See* Declaration of Drew Lombardi, attached hereto as **Exhibit A** (describing/attesting to exhibits); *see also* Complaint, attached hereto as **Exhibit B** at ¶¶ 2.1, 2.3, 2.5.

B. Relevant Procedural Facts

Plaintiff filed a Complaint in the Superior Court of Washington for King County on March 1, 2021. *See* Ex. B. There are no specific allegations or representations pertaining to damages in the Complaint (*i.e.*, no amounts claimed). *See Id.*

On June 3, 2021, Plaintiff served a response to Defendants’ RCW 4.28.360 Request for Statement of Damages indicating damages in excess of \$127,000. *See* Pl.’s Resp. to Defendants’ Request, attached hereto as **Exhibit C**.

II. BASIS FOR REMOVAL

A. Removal Is Timely

The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter. 28 U.S.C. § 1446(b)(1). If a case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or “other paper” from which it may first be ascertained that the case is one which is, or which has become removable. *Id.* § 1446(b)(3).

NOTICE OF REMOVAL BY DEFENDANTS - 2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

1 In this matter, the case stated by the initial pleading was not removable (no specific
2 amounts claimed in Complaint); however, Plaintiff's response to Defendants' Request for
3 Statement of Damages constitutes "other paper" within the meaning of 28 U.S.C. § 1446 from
4 which it could be ascertained that this case is removable. As this Notice is being filed within
5 30 days of receipt of that response/"other paper," this Notice is timely.

6 **B. This Court Has Original Jurisdiction Over This Matter Under 28 U.S.C. § 1332(a)**

7 The district courts shall have original jurisdiction of all civil actions where the matter in
8 controversy (1) exceeds the sum or value of \$75,000, exclusive of interest and costs, and (2) is
9 between citizens of different states. 28 U.S.C. § 1332(a)(1). For the purposes of sections 1332
10 and 1441 of Title 28, a corporation shall be deemed to be a citizen of (a) the state in which it
11 has been incorporated, or (b) the state wherein it has its principal place of business. 28 U.S.C.
12 § 1332(c)(1); *see also Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 924 (2011).

13 1. The Matter In Controversy Exceeds The Sum Or Value of \$75,000

14 Per Plaintiff's response to Defendants' Request for Statement of Damages, Plaintiff's
15 current estimate of his damages exceeds \$127,000. *See* Ex. C.

16 2. There Is Total Diversity Between The Parties

17 Upon information and belief, Plaintiff is a resident of King County, Washington. *See*
18 Ex. B. at ¶ 1.1. Thus, Plaintiff is a "citizen of" Washington State. Gerardo Ponce and Jane
19 Doe Ponce are residents of Oklahoma County, Oklahoma. Thus, they are "citizens" of the
20 State of Oklahoma.

21 Penske Truck Leasing Co., L.P., of Washington is (a) incorporated in Delaware, and (b)
22 its principal place of business is in Pennsylvania. Thus, Penske Truck Leasing Co., L.P., of
23 Washington is a "citizen of" either Delaware or Pennsylvania, but not Washington State. For
24 the purposes of LCR 101(f), Penske Truck Leasing Co., L.P., of Washington's General Partner
25 is PTL GP, LLC. PTL GP, LLC is (a) incorporated in Delaware, and (b) its principal place of

NOTICE OF REMOVAL BY DEFENDANTS - 3

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

business is in Pennsylvania. Thus, PTL GP, LLC is a “citizen of” either Delaware or Pennsylvania, but not Washington State. Based on the foregoing, there is total diversity between these parties as described in 28 U.S.C. 1332(a)(1).

C. All Defendants Consent To The Removal

All defendants who have been properly joined and served must consent to the removal of this action. *See* 28 U.S.C. § 1446(b)(2)(A). “One defendant’s timely removal notice containing an averment of the other defendants’ consent and signed by an attorney of record is sufficient.” *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1224-25 (9th Cir. 2009). “[T]he filing of a notice of removal can be effective without individual consent documents on behalf of each defendant.” *Id.* at 1225. Penske Truck Leasing Co., L.P., of Washington, Gerardo Ponce, and Jane Doe Ponce, all share the same attorney of record and consent to the removal of this action.

III. PROCEDURAL COMPLIANCE

A. This Notice Complies With Applicable Local And Federal Rules

Pursuant to LCR 101(b), in cases removed from state court, the removing defendant shall file contemporaneously with the notice of removal:

- (1) A copy of the operative complaint, which must be attached as a separate “attachment” in the electronic filing system and labeled as the “complaint” or “amended complaint.”
- (2) A certificate of service which lists all counsel and pro se parties who have appeared in the action with their contact information, including email address.
- (3) A copy of any Jury Demand filed in the state court, which must be filed as an attachment and labeled “Jury Demand.”

In addition to the foregoing, the removing defendant(s) shall, within 14 days of filing this Notice, or contemporaneously, file with the Clerk of this Court black-on-white copies of all

NOTICE OF REMOVAL BY DEFENDANTS - 4

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

1 additional records and proceedings in the state court, together with verification that they are
2 true and complete copies. LCR 101(c).

3 In accordance with the above rules, true and complete copies of the following are
4 attached hereto:

- 5 1. Complaint (Ex. B), which is included as a separate attachment in the electronic
6 filing system, and labeled as the “Complaint”;
- 7 2. Certificate of Service on Page 7 below; and
- 8 3. True and correct copies of all additional records and proceedings filed in the
9 state court proceeding being removed by virtue of this petition, attached hereto as **Exhibit D**.
10 *See also* Ex. A (attesting to and declaring truth and completeness of these filings in accordance
11 with LCR 101(c)).

12 These documents/exhibits constitute and contain the entirety of the records and
13 proceedings filed in King County Superior Court as of the date of filing this Notice.

14 **B. This Notice Is Properly Filed In This Court, And The King County Superior**
15 **Court Is On Notice Of These Proceedings**

16 This Notice is properly filed in the United States District Court for the Western District
17 of Washington because this Court embraces King County, the county in which the state court
18 action is now pending. *See* 28 U.S.C. §§ 128(b) and 1441(a).

19 Pursuant to 28 U.S.C. § 1446(d), Defendants are filing a copy of this Notice with the
20 Clerk of the King County Superior Court and are also serving a copy of this Notice on counsel
21 of record in the state court action.

22 **IV. CONCLUSION**

23 Defendants hereby remove this matter from the King County Superior Court to the
24 United States District Court for the Western District of Washington at Seattle pursuant to 28
25 U.S.C. §§ 1332, 1441, and 1446. By seeking removal, Defendants do not waive any defenses,

NOTICE OF REMOVAL BY DEFENDANTS - 5

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

1 including but not limited to lack of personal jurisdiction, insufficiency of process, or
2 insufficiency of service of process.

3 DATED this 23rd day of June, 2021.

4 WILLIAMS, KASTNER & GIBBS PLLC

5 /s/ Rodney L. Umberger

6 Rodney L. Umberger, WSBA #24948

7 /s/ Drew V. Lombardi, WSBA #56997

8 Drew. V. Lombardi, WSBA #56997

9 601 Union Street, Suite 4100

Seattle, WA 98101-2380

Telephone: (206) 628-6600

10 Email: rumberger@williamskastner.com

dlombardi@williamskastner.com

11 *Attorneys for Defendants Gerardo Ponce and*
12 *Jane Doe Ponce, and Penske Truck Leasing Co.,*
13 *L.P. Of Washington*

14
15
16
17
18
19
20
21
22
23
24
25
NOTICE OF REMOVAL BY DEFENDANTS - 6

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on June 23, 2021, I electronically filed the foregoing and all referenced attachments with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those registered with CM/ECF.

Further, I hereby certify that on June 23, 2021, I provided the foregoing to following non-CM/ECF participants via Electronic Mail/Email:

J.D. Smith, WSBA #28246 Law Office of J.D. Smith, PLLC 8015 SE 28th Street, Suite #212 Mercer Island, WA 98040 Telephone: (206) 588-8529 Email: JD@JDSmithLaw.com <i>Attorney for Plaintiff Preston Wilson</i>	SENT VIA: <input checked="" type="checkbox"/> E-File/E-Serve <input type="checkbox"/> Regular U.S. Mail <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> Email
---	---

DATED this 23rd day of June, 2021.

/s/ Drew V. Lombardi, WSBA #56997

Drew. V. Lombardi, WSBA #56997
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: (206) 628-6600
Email: dlombardi@williamskastner.com

*Attorneys for Defendants Gerardo Ponce and Jane Doe Ponce,
and Penske Truck Leasing Co., L.P. Of Washington*

NOTICE OF REMOVAL BY DEFENDANTS - 7

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PRESTON WILSON, an individual,

Plaintiff,

v.

GERARDO PONCE and JANE/JOHN DOE
PONCE, individually and as a marital
community; and PENSKE TRUCK LEASING
CO., LP., OF WASHINGTON, a foreign
limited partnership,

Defendants.

NO.

**DECLARATION OF DREW V.
LOMBARDI IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL**

(KING COUNTY SUPERIOR COURT
CAUSE NO. 21-2-02771-3SEA)

I, Drew V. Lombardi, declare as follows:

1. I am an attorney at the law firm Williams, Kastner & Gibbs PLLC, and I am
licensed to practice law in the State of Washington and this Court.

2. I am over the age of eighteen and a U.S. Citizen. I have personal knowledge of
the facts referred to in this Declaration and could competently testify to these facts if called
upon to do so in a court of law.

//
//
//

DECLARATION OF DREW V. LOMBARDI IN SUPPORT OF
DEFENDANTS' NOTICE OF REMOVAL - 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7358597.2

3. Along with Rodney L. Umberger, I represent the Defendants in the above-captioned lawsuit, and I am making this Declaration in support of Defendants' Notice of Removal to this Court.

4. This Declaration is identifiable as **Exhibit A** to Defendants' Notice of Removal.

5. Attached hereto as **Exhibit B** (to Defendants' Notice of Removal) is a true and complete copy of the operative Complaint¹ filed in State Court in this matter.

6. Attached hereto as **Exhibit C** (to Defendants' Notice of Removal) is a true and complete copy of Plaintiff's Response to Defendants' Request for Statement of Damages.

7. Attached hereto as **Exhibit D** (to Defendants' Notice of Removal), in accordance with LCR 101(c), are true and complete copies of all additional records and proceedings filed in the underlying State Court action.

I declare under penalty of perjury under the laws of the United States and of the State of Washington that the foregoing is true and correct.

DATED this 23rd day of June, 2021.

By: /s/Drew V. Lombardi, WSBA #56997
Drew. V. Lombardi, WSBA #56997
WILLIAMS, KASTNER & GIBBS PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: (206) 628-6600
Email: dlombardi@williamskastner.com

Counsel for Defendants Gerardo Ponce, Jane Doe Ponce, and Penske Truck Leasing Co., L.P., of Washington

¹ Please note that Plaintiff did not file a separate Summons when initiating the King County Superior Court case but, rather, attached the Summons as the last two pages of the filed Complaint.

DECLARATION OF DREW V. LOMBARDI IN SUPPORT OF
DEFENDANTS' NOTICE OF REMOVAL - 2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

0300
GEGAT OUAFAECK I ÁÚT
S O Ô AUW VY
UWUOUUUAUWUVAOSÜS
0300
OEUOAKFEGG I FEAÜCE

**KING COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON**

PRESTON WILSON, an individual,

Plaintiff,

vs.

GERARDO PONCE and JANE/JOHN DOE
PONCE, individually and as a marital
community, and PENSKE TRUCK LEASING
CO., LP., OF WASHINGTON, a foreign
limited partnership,

Defendants.

NO.

COMPLAINT FOR DAMAGES

COMES NOW the plaintiff, Preston Wilson, an individual, by and through his
attorney, J.D. Smith of Law Office of J.D. Smith, PLLC, and allege as follows:

I. PARTIES AND JURISDICTION

1.1 Preston Wilson (hereinafter “Plaintiff”) at all relevant times resided in
Newcastle, King County, Washington.

1 1.2 Upon information and belief, Gerardo Ponce (hereinafter “Defendant
2 Ponce”) was a resident of Bethany, Oklahoma County, Oklahoma. All acts alleged herein
3 were for and on behalf of the marital community of Gerardo Ponce and Jane/John Doe
4 Ponce.

5 1.3 Upon information and belief, Penske Truck Leasing Co., LP., of
6 Washington (hereinafter “Defendant Penske”) is a foreign limited partnership doing
7 business in Washington State.
8

9 1.4 The collision that is the subject of this Complaint occurred in or near Seattle,
10 Washington in the County of King. Thus, jurisdiction and venue are proper in this Court.
11

12 II. ALLEGATIONS COMMON TO ALL CLAIMS

13 2.1 On or about October 4, 2019, Plaintiff was traveling westbound on S.
14 Michigan Street, in the inside lane, just past the 6th Avenue S., intersection, in Seattle,
15 Washington, driving a City of Seattle Public Utility vehicle.

16 2.2 Defendant Ponce was driving a rented Penske moving truck westbound in
17 the far outside lane on S. Michigan street, in the lane next to Plaintiff.
18

19 2.3 As both the Plaintiff and Defendant entered the intersection, Defendant Ponce
20 moved into the inside lane to avoid leaving the back end of his vehicle half-way out in the
21 intersection, failed to stop, and struck the rear of Plaintiff’s vehicle.

22 2.4 Defendant Penske is the owner of the vehicle leased to Defendant Ponce and
23 failed to properly train him in driving the rental truck.
24
25
26

1 2.5 As a result of the collision, Plaintiff suffered injuries to his neck, shoulders, and
2 lower back.

3 2.4 Consequently, Plaintiff received and are obligated to pay for medical
4 treatment that became necessary as a result of this collision. His treatment, pain, and
5 discomfort continue.

6
7 **III. CAUSE OF ACTION—NEGLIGENCE**

8 3.1 A person operating a motor vehicle has a duty to use reasonable care and
9 skill so as to avoid foreseeable collisions.

10 3.2 Defendant Ponce breached his duty of care by failing to operate a motor
11 vehicle in a reasonably safe manner.

12 3.3. Defendant Penske failed to adequately train Defendant Ponce on the use of
13 their rental truck.

14 3.3 The Defendants' breach was the actual and proximate cause of the damages
15 sustained by the Plaintiff.

16
17 **IV. NO COMPARATIVE FAULT**

18 4.1 Plaintiff is without fault of any kind or nature whatsoever and did not
19 contribute to his injuries or damages in any way. Defendants' are jointly and severally
20 liable for Plaintiff's injuries.
21
22
23
24
25
26

V. DAMAGES

5.1 As a direct and proximate result of the collision, Plaintiff suffered personal injuries, which have and will continue to occur for an indefinite time into the future. Plaintiff suffered mental and emotional distress and incurred economic and non-economic damages, which have continued and will continue for an indefinite period of time.

5.2 Plaintiff's injuries required medical treatment.

5.3 Plaintiff sustained injuries, damages, expenses and losses, including, but not limited to:

1. Economic
 - a. Medical expenses, both past and future;
 - b. Income loss;
 - c. Other out-of-pocket expenses; and
 - d. Other recoverable economic damages.
2. Non-economic
 - a. Past and future pain;
 - b. Past and future physical suffering;
 - c. Past and future mental and emotional suffering;
 - d. Past and future disability;
 - e. Loss of enjoyment of life; and
 - f. Other recoverable non-economic damages.

1 g. As a direct and proximate result of the collision, Plaintiff
2 suffered personal injuries, which have continued, and will continue to occur for an indefinite
3 time into the future. Plaintiff suffered mental and emotional distress and incurred economic
4 and non-economic damages, which have continued and will continue for an indefinite period
5 of time.

6
7 **VI. PRAYER FOR RELIEF**

8 **WHEREFORE**, the Plaintiff prays for a judgment against these Defendants, jointly and
9 severally, as follows:

- 10 6.1 Economic damages for Plaintiff in such amounts as are proven at trial.
11 6.2 Non-Economic damages for Plaintiff in such amounts as are proven at trial.
12 6.3 Costs including reasonable attorney's fees for Plaintiff as are proven at trial.
13 6.4 For such other and further relief as the court deems just, equitable and
14 proper for Plaintiff as are proven at the time of trial.
15

16
17 DATED this 1st day of March, 2021.
18

19 

20
21 J.D. SMITH, WSBA No. 28246
22 Attorney for Plaintiff Preston Wilson
23
24
25
26

**KING COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON**

PRESTON WILSON, an individual,

Plaintiff,

vs.

GERARDO PONCE and JANE/JOHN DOE
PONCE, individually and as a marital
community, and PENSKE TRUCK LEASING
CO., LP., OF WASHINGTON, a foreign
limited partnership,

Defendants.

NO.

SUMMONS

TO: Gerardo Ponce and Jane/John Doe Ponce, Defendants;
AND TO: Penske Truck Leasing Co., LP., of Washington, Defendants.

Plaintiff Preston Wilson has started a lawsuit against you in the above-entitled Court. Plaintiff's claims are stated in the Complaint for Damages, copies of which are served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the person signing this Summons within 20

SUMMONS - 1

LAW OFFICE OF J.D. SMITH, PLLC
8015 SE 28TH ST., SUITE 212
MERCER ISLAND, WA. 98040
TEL: (206) 588-8529

1 days after the service of this Summons, or within 60 days if this Summons was served
2 outside of the State of Washington, excluding the date of service, or a Default Judgment
3 may be entered against you without notice. A Default Judgment is one where Plaintiff is
4 entitled to what he asks for because you have not responded. If you serve a Notice of
5 Appearance on the undersigned person, you are entitled to Notice before a Default
6 Judgment may be entered.
7

8 You may demand that the Plaintiff file this lawsuit with the Court. If you do so,
9 the demand must be in writing, and must be served upon the person signing this Summons.
10 Within 14 days after you serve the demand, the Plaintiff must file this lawsuit with the
11 Court, or the service on you of this Summons and Complaint will be void.
12

13 If you wish to seek the advice of an attorney in this matter, you should do so
14 promptly so that your written response, if any, may be served on time.

15 THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules
16 of the State of Washington.
17

18
19 DATED this 1st day of March, 2021.

20
21 
22 J.D. SMITH, WSBA No. 28246
23 Attorney for Plaintiff Preston Wilson
24
25
26

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

PRESTON WILSON, an individual,

Plaintiff,

vs.

GERARDO PONCE and JANE/JOHN DOE
PONCE, individually and as a marital
community, and PENSKE TRUCK LEASING
CO., LP., OF WASHINGTON, a foreign
limited partnership,

Defendants.

No. 21-2-02771-3SEA

**PLAINTIFF'S OBJECTION AND
RESPONSE TO REQUEST FOR
STATEMENT OF DAMAGES**

TO: GERARDO PONCE and PENSKE TRUCK LEASING CO., LP., OF WASHINGTON,
Defendants.

AND TO: Rodney L. Umberger and Drew. V. Lombardi, WILLIAMS, KASTNER & GIBBS
PLLC, Attorney for Defendants

COME NOW, the Plaintiff herein, by and through his counsel of record, J.D.
Smith, and OBJECTS to the introduction of the following damages statement into evidence on
the grounds that;

PLAINTIFF'S OBJECTION AND RESPONSE TO
REQUEST FOR STATEMENT OF DAMAGES 1

LAW OFFICE OF J.D. SMITH, PLLC
8015 SE 28TH ST., SUITE 212
MERCER ISLAND, WA. 98040
TEL: (206) 588-8529

1. RCW 4.28.360 is procedural, not substantive. *McNeal v. Allen*, 95 Wn.2d 265, 267, 621 P.2d 1285 (1980). It should not be used as substantive evidence.
2. Although relevant, the probative value of this Statement is substantially outweighed by the danger of unfair prejudice, confusion, and its potential to mislead the jury. ER 403. For example, the value of both special and general damages may change between the time of a settlement and the date of trial to account for the costs of additional treatment, litigation, the earning power of funds paid pending trial, the vagaries of trial, etc.
3. The Statement constitutes evidence of offering to accept a valuable consideration to compromise a disputed claim or conduct or statements in furtherance of compromise negotiations. ER 408.
4. The Statement constitutes a disclosure of the mental impressions, conclusions, and opinions of an attorney concerning the litigation. CR 26(b)(4).

Without waiving the above objections and pursuant to RCW 4.28.360, plaintiff provides the following statement setting forth separately the amount of special and general damages.

Economic Damages

Medical expense, as of March 1, 2021, are approximately \$15,916.00. We have requested a detailed ledger and upon receipt we will provide a breakdown of the total.

Lost Wages to date are approximately \$1,785.00.

Future Medical Expenses are estimated to likely exceed \$10,000.00.

Future Wage Loss is uncertain.

PLAINTIFF'S OBJECTION AND RESPONSE TO
REQUEST FOR STATEMENT OF DAMAGES 2

LAW OFFICE OF J.D. SMITH, PLLC
8015 SE 28TH ST., SUITE 212
MERCER ISLAND, WA. 98040
TEL: (206) 588-8529

Non-Economic Damages

The amount of Plaintiff's Non-Economic Damages will be determined by a jury. At trial, the Court will instruct the jury that the law has not furnished us with any fixed standards by which to measure general damages. WPI 30.01.01. However, for purposes of this pleading only, and in the spirit of facilitating good faith settlement discussions and assisting the defendants' liability insurance carrier in setting appropriate insurance reserves, Plaintiff's Non-Economic Damages include claims for disability, loss of enjoyment of life, inconvenience, fear of future consequences of his injuries, loss of quality of life, emotional distress, and past, present and future pain and suffering (mental, psychological and emotional), and disfigurement. For the purpose of answering this Request, and without prejudice to Plaintiffs' right to change this early, Non-Economic Damage estimation, Plaintiffs currently estimate their combined Non-Economic Damages to be **in excess of One Hundred Thousand Dollars (\$100,000.00)**. This figure is derived from review of relevant Northwest Jury Verdict awards involving injuries similar to those sustained by the Plaintiffs in this action. It should be underscored, however, that this is a preliminary estimate only. Plaintiff Preston Wilson was permanently impacted by the injuries he sustained as a result of the defendant's negligence, and as such, Plaintiff will require ongoing medical care and monitoring for the remainder of his life. Plaintiff Preston Wilson has also been informed that because he has suffered the sort of injury which he has as a result of the defendant's negligence, he is now more susceptible to suffer the same injury again in his lifetime, which could cause his further disfigurement, disability, or death. Accordingly, this estimate may be adjusted based upon, among other things, the opinions and analysis of expert

PLAINTIFF'S OBJECTION AND RESPONSE TO
REQUEST FOR STATEMENT OF DAMAGES 3

LAW OFFICE OF J.D. SMITH, PLLC
8015 SE 28TH ST., SUITE 212
MERCER ISLAND, WA. 98040
TEL: (206) 588-8529

witnesses, the total amount of economic damages established at trial and the nature and extent of the physical and emotional injuries that have thus far been sustained in this matter.

Dated this 2nd day of June, 2021

LAW OFFICE OF J.D. SMITH, PLLC

/s/ J.D. Smith
J.D. Smith, WSBA #28246
Email: JD@JDSmithLaw.com
Attorneys for Plaintiff Preston Wilson

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 3rd day of June, 2021, I caused a true and correct copy of the foregoing document, to be delivered to the following counsel of record in the manner noted below:

<p>Rodney L. Umberger, Drew. V. Lombardi, Brumbaugh, Catherine, 601 Union Street, Suite 4100 Seattle, WA 98101-2380 Telephone: (206) 628-6600 Email: rumberger@williamskastner.com dlombardi@williamskastner.com cbrumbaugh@williamskastner.com <i>Attorneys for Defendants</i></p>	<p>SENT VIA:</p> <p><input type="checkbox"/> E-File/E-Serve <input type="checkbox"/> Regular U.S. Mail <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> Email</p>
---	--

DATED this 3rd day of June, 2021.

LAW OFFICE OF J.D. SMITH, PLLC

/s/ Jocelyn Gil
Jocelyn Gil, Legal Assistant

PLAINTIFF'S OBJECTION AND RESPONSE TO
REQUEST FOR STATEMENT OF DAMAGES 4

LAW OFFICE OF J.D. SMITH, PLLC
8015 SE 28TH ST., SUITE 212
MERCER ISLAND, WA. 98040
TEL: (206) 588-8529

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING**

Wilson		NO. 21-2-02771-3 SEA
	Plaintiff(s)	ORDER SETTING CIVIL CASE SCHEDULE
vs		ASSIGNED JUDGE: CHUNG, Dept. 15
PONCE		FILED DATE: 03/01/2021
	Defendant(s)	TRIAL DATE:02/28/2022

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

NOTICE TO PLAINTIFF: The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the *Schedule* on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [*KCLCR*] -- especially those referred to in this **Schedule**. In order to comply with the **Schedule**, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See *KCLCR* 26], and for meeting the discovery cutoff date [See *KCLCR* 37(g)].

You are required to give a copy of these documents to all parties in this case.

I. NOTICES (continued)

CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$240 must be paid when any answer that includes additional claims is filed in an existing case.

KCLCR 4.2(a)(2)

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule **if the case is subject to mandatory arbitration** and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. **Any party filing a Statement must pay a \$250 arbitration fee.** If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$400 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4A.630.020 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

King County Local Rules are available for viewing at www.kingcounty.gov/courts/clerk.

II. CASE SCHEDULE

* CASE EVENT	EVENT DATE
Case Filed and Schedule Issued.	03/01/2021
* Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. \$220 arbitration fee must be paid	08/09/2021
* DEADLINE to file Confirmation of Joinder if not subject to Arbitration [See KCLCR 4.2(a) and Notices on Page 2].	08/09/2021
DEADLINE for Hearing Motions to Change Case Assignment Area [KCLCR 82(e)].	08/23/2021
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLCR 26(k)].	09/27/2021
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLCR 26(k)].	11/08/2021
DEADLINE for Jury Demand [See KCLCR 38(b)(2)].	11/22/2021
DEADLINE for a Change in Trial Date [See KCLCR 40(e)(2)].	11/22/2021
DEADLINE for Discovery Cutoff [See KCLCR 37(g)].	01/10/2022
DEADLINE for Engaging in Alternative Dispute Resolution [See KCLCR 16(b)].	01/31/2022
DEADLINE: Exchange Witness & Exhibit Lists & Documentary Exhibits [KCLCR 4(j)].	02/07/2022
* DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16(a)(1)]	02/07/2022
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56; CR 56].	02/14/2022
* Joint Statement of Evidence [See KCLCR 4 (k)]	02/22/2022
DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file proposed Findings of Fact and Conclusions of Law with the Clerk)	02/22/2022
Trial Date [See KCLCR 40].	02/28/2022

The * indicates a document that must be filed with the Superior Court Clerk's Office by the date shown.

III. ORDER

Pursuant to King County Local Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action **must** serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 03/01/2021



PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE.

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

APPLICABLE RULES: Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

CASE SCHEDULE AND REQUIREMENTS: Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.

A. Joint Confirmation regarding Trial Readiness Report

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g., interpreters, equipment).

The Joint Confirmation Regarding Trial Readiness form is available at www.kingcounty.gov/courts/scforms. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding the report.

B. Settlement/Mediation/ADR

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.

C. Trial

Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the court's civil standby calendar on the King County Superior Court website www.kingcounty.gov/courts/superiorcourt to confirm the trial judge assignment.

MOTIONS PROCEDURES

A. Noting of Motions

Dispositive Motions: All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

Non-dispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule

7 governs these motions, which include discovery motions. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at www.kingcounty.gov/courts/clerk/rules.

Emergency Motions: Under the court's local civil rules, emergency motions will usually be allowed only upon entry of an Order Shortening Time. However, some emergency motions may be brought in the Ex Parte and Probate Department as expressly authorized by local rule. In addition, discovery disputes may be addressed by telephone call and without written motion, if the judge approves in advance.

B. Original Documents/Working Copies/ Filing of Documents: All original documents must be filed with the Clerk's Office. Please see information on the Clerk's Office website at www.kingcounty.gov/courts/clerk regarding the requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website. The local rules can be found at www.kingcounty.gov/courts/clerk/rules.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. Working copies can be submitted through the Clerk's office E-Filing application at www.kingcounty.gov/courts/clerk/documents/eWC.

Service of documents: Pursuant to Local General Rule 30(b)(4)(B), e-filed documents shall be electronically served through the e-Service feature within the Clerk's eFiling application. Pre-registration to accept e-service is required. E-Service generates a record of service document that can be e-filed. Please see the Clerk's office website at www.kingcounty.gov/courts/clerk/documents/efiling regarding E-Service.

Original Proposed Order: Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. **Do not file the original of the proposed order with the Clerk of the Court.** Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order. The court may distribute orders electronically. Review the judge's website for information: www.kingcounty.gov/courts/SuperiorCourt/judges.

Presentation of Orders for Signature: All orders must be presented to the assigned judge or to the Ex Parte and Probate Department, in accordance with Local Civil Rules 40 and 40.1. Such orders, if presented to the Ex Parte and Probate Department, shall be submitted through the E-Filing/Ex Parte via the Clerk application by the attorney(s) of record. E-filing is not required for self-represented parties (non-attorneys). If the assigned judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the Ex Parte and Probate Department. Such orders shall be submitted through the E-Filing/Ex Parte via the Clerk application by the attorney(s) of record. E-filing is not required for self-represented parties (non-attorneys). Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. **If final order and/or formal proof are entered in the Ex Parte and Probate Department, counsel is responsible for providing the assigned judge with a copy.**

C. Form

Pursuant to Local Civil Rule 7(b)(5)(B), the initial motion and opposing memorandum shall not exceed 4,200 words and reply memoranda shall not exceed 1,750 words without authorization of the court. The word count

includes all portions of the document, including headings and footnotes, except 1) the caption; 2) table of contents and/or authorities, if any; and 3): the signature block. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PEITITONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.



PRESIDING JUDGE

0300
GEGAT OUAFAEK I ÁT
S O ÁUW VY
UWUOUUÁUWVÁŠÖÜS
ÖÖSÖÖ
ÖÖUÖÄK FEG I FÄUÖE

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING**

Wilson

vs

Ponce

No. 21-2-02771-3 SEA

**CASE INFORMATION COVER SHEET AND
AREA DESIGNATION**

(CICS)

CAUSE OF ACTION

TMV - Tort /Motor Vehicle

AREA OF DESIGNATION

SEA

Defined as all King County north of Interstate 90 and including all of Interstate 90 right of way, all of the cities of Seattle, Mercer Island, Issaquah, and North Bend, and all of Vashon and Maury Islands.

0500
GEGAT OUAJ AEJKEAET
SO OAUW VY
UWUOUUUAUWUVAOSUS
OESOO
OEUAKEFEG I FEAUCE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

PRESTON WILSON, an individual,

Plaintiff,

vs.

NO. 21-2-02771-3 SEA

DECLARATION OF SERVICE

GERARDO PONCE and JANE/JOHN DOE
PONCE, individually and as a marital community,
and PENSKE TRUCK LEASING CO., LP., OF
WASHINGTON, a foreign limited partnership,

Defendants.

I, J.D. Smith, declare under penalty of perjury under the laws of the State of Washington
that the following is true and correct.

1. I am Counsel of record for Preston Wilson. I am over the age of 18 and am
competent to testify to the facts set out in this Declaration. The facts are based upon my
personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of a declaration of service
declaring proof of service of process on Defendant Penske Truck Leasing Co of Washington.

3. Attached as Exhibit 2 is a true and correct copy of a declaration of service
declaring proof of service of process on Defendant Gerardo and Jane/John Ponce.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 7th day of March 2021 in Mercer Island, Washington




J.D. Smith, Declarant

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that
on this date I emailed the Declaration of Service and Exhibits to the 3rd party claims rep Candy
Comstock of Gallagher Bassett. Once there is a notice of appearance I will forward to Counsel for
the defendants.

Dated at Mercer Island, Washington, this 7th day of March 2021



J.D. Smith

Exhibit 1

SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

Plaintiff / Petitioner: PRESTON WILSON, an individual	Case No: 21-2-02771-3 SEA
Defendant / Respondent: GERARDO PONCE and J. DOE PONCE, et al	DECLARATION OF SERVICE

The undersigned, being first duly sworn on oath deposes and says: That he/she is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

That on Thu, Mar 04 2021 at 02:50 PM, at the address of 300 Deschutes Way SW Suite 208, within Tumwater, WA 98501, the undersigned duly served the following document(s): Summons, Complaint and Case Schedule in the above entitled action upon PENSKE TRUCK LEASING CO., LP, OF WASHINGTON, by then and there, personally delivering 1 true and correct copy of the above documents into the hands of and leaving same with JUANITY HUEY, CSA at Corporation Service Company as Registered Agent.

Description:

Age: 45; Ethnicity: Caucasian; Gender: Female; Weight: 140; Height: 5'3"; Hair: Black

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

Date: 03/04/2021

Fees: \$105.00



Patrick O'Brien
Pierce County-28812
Pegasus Process Service
PO Box 98121
Des Moines, WA 98198

AFFIDAVIT OF SERVICE

Case: 21-2- 02771-3	Court: KING COUNTY SUPERIOR COURT IN AND FOR THE STATE OF WASHINGTON	County:	Job: 5414747 (21-2-02771-3)
Plaintiff / Petitioner: PRESTON WILSON		Defendant / Respondent: GERADO PONCE AND JANE/JOHN DOE PONCE	
Received by: Millers Process server		For: Pegasus Process Service	
To be served upon: GERARDO PONCE			

I, Caryn Miller (PSS-2020-5), being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

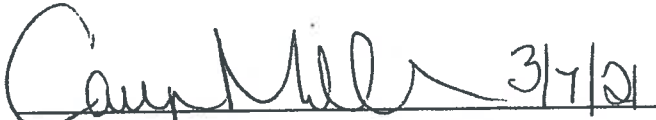
Recipient Name / Address: GERADO PONCE, 3509 N Rockwell Ave, Bethany, OK 73008

Manner of Service: Substitute Service - Abode, Mar 4, 2021, 5:21 pm CST

Documents: SUMMONS, COMPLAINT FOR DAMAGES AND NOTICES

Additional Comments:

1) Successful Attempt: Mar 4, 2021, 5:21 pm CST at 3509 N Rockwell Ave, Bethany, OK 73008 received by MARIA PONCE. Age: 40; Ethnicity: Hispanic; Gender: Female; Weight: 140; Height: 5'0"; Hair: Black; Other: Maria was wearing a gray shirt and jeans; Pulled up to the house a lady was outside in the garden, I walked up to her asked for Gerardo she said that is my husband he was not there. She stated her name was Maria and she would accept the paperwork.


Caryn Miller (PSS-2020-5) Date 3/7/21

Millers Process server
P.O BOX 94134
OKLAHOMA CITY, ok 73143
4054655037

Subscribed and sworn to before me by the affiant who is personally known to me.


Notary Public
3/7/21 Date 08/26/22 Commission Expires



AFFIDAVIT OF SERVICE

Case: 21-2-02771-3	Court: KING COUNTY SUPERIOR COURT IN AND FOR THE STATE OF WASHINGTON	County:	Job: 5414747 (21-2-02771-3)
Plaintiff / Petitioner: PRESTON WILSON		Defendant / Respondent: GERADO PONCE AND JANE/JOHN DOE PONCE	
Received by: Millers Process server		For: Pegasus Process Service	
To be served upon: GERARDO PONCE			

I, Caryn Miller (PSS-2020-5), being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

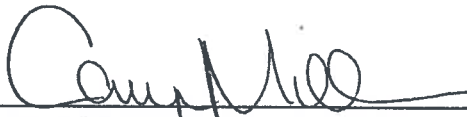
Recipient Name / Address: JANE/JOHN DOE PONCE, 3509 N Rockwell Ave, Bethany, OK 73008

Manner of Service: Substitute Service - Abode, Mar 4, 2021, 5:21 pm CST

Documents: SUMMONS, COMPLAINT FOR DAMAGES AND NOTICES

Additional Comments:

1) Successful Attempt: Mar 4, 2021, 5:21 pm CST at 3509 N Rockwell Ave, Bethany, OK 73008 received by MARIA PONCE. Age: 40; Ethnicity: Hispanic; Gender: Female; Weight: 140; Height: 5'0"; Hair: Black; Other: Maria was wearing a gray shirt and jeans; Pulled up to the house a lady was outside in the garden, I walked up to her asked for Gerardo she said that he was her husband, she excepted the paperwork.

 3/7/21
Caryn Miller (PSS-2020-5) Date

Millers Process server
P.O BOX 94134
OKLAHOMA CITY, ok 73143
4054655037

Subscribed and sworn to before me by the affiant who is personally known to me.


Notary Public
3/7/21 08/26/22
Date Commission Expires



Honorable Samuel Chung
Trial Date: February 28, 2022

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PRESTON WILSON, an individual,

Plaintiff,

v.

GERARDO PONCE and JANE/JOHN DOE
PONCE, individually and as a marital
community; and PENSKE TRUCK LEASING
CO., LP., OF WASHINGTON, a foreign
limited partnership,

Defendants.

NO. 21-2-02771-3SEA

DEFENDANTS' NOTICE OF
APPEARANCE

TO: CLERK OF THE COURT

AND TO: J.D. Smith, and Law Office of J.D. Smith, PLLC, Counsel for Plaintiff

PLEASE TAKE NOTICE that Defendants Gerardo Ponce, "Jane Doe" Ponce; and Penske Truck Leasing Co., L.P. of Washington ("Defendants") hereby make their appearance in the above-captioned proceeding by and through the undersigned attorneys.

This appearance is without waiver of any defenses, including, but not limited to, insufficient service of process and lack of personal jurisdiction. All further papers and pleadings, except process, in this cause may be served upon said Defendants by delivering a copy thereof to the undersigned attorneys at the address below. Service upon another law firm office and

DEFENDANTS' NOTICE OF APPEARANCE - 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356323.1

1 service without express direction to deliver to Rodney L. Umberger and/or Drew V. Lombardi
2 will not be deemed valid.

3 DATED this 17th day of March, 2021.

4 WILLIAMS, KASTNER & GIBBS PLLC

6 /s/ Rodney L. Umberger, WSBA #24948

7 /s/ Drew. V. Lombardi, WSBA #56997

8 Rodney L. Umberger, WSBA #24948

9 Drew. V. Lombardi, WSBA #56997

601 Union Street, Suite 4100

Seattle, WA 98101-2380

Telephone: (206) 628-6600

10 Email: rumberger@williamskastner.com

11 dlombardi@williamskastner.com

12 *Attorneys for Defendants Gerardo Ponce and*
13 *“Jane Doe” Ponce, and Penske Truck Leasing*
14 *Co., L.P. Of Washington*

25 DEFENDANTS' NOTICE OF APPEARANCE - 2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356323.1

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 17th day of March, 2021, I electronically filed the foregoing with the Clerk of the Court using the King County E-Filing system.

Further, I hereby certify under penalty of perjury under the laws of the State of Washington that on the 17th day of March, 2021, I caused a true and correct copy of the foregoing document, to be delivered to the following counsel of record in the manner noted below:

J.D. Smith, WSBA #28246 Law Office of J.D. Smith, PLLC 8015 SE 28th Street, Suite #212 Mercer Island, WA 98040 Telephone: (206) 588-8529 Email: JD@JDSmithLaw.com <i>Attorneys for Plaintiff Preston Wilson</i>	SENT VIA: <input checked="" type="checkbox"/> E-File/E-Serve <input type="checkbox"/> Regular U.S. Mail <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Email
--	--

DATED this 17th day of March, 2021.

/s/ Dena S. Levitin, Legal Assistant
Dena S. Levitin, Legal Assistant
on behalf of Drew V. Lombardi
and Rodney L. Umberger

DEFENDANTS' NOTICE OF APPEARANCE - 3

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356323.1



Dept of Judicial Administration – E-Filing

Superior Court Clerk's Office

Welcome Drew Lombardi

[Home](#)
[E-Filing](#)
[E-Service](#)
[My Cases](#)
[Sign Out](#)

INSTRUCTIONS

▶ Save or print this confirmation receipt for your file

▶ [help](#)

Please do not use your browser's 'Back' button

[start over](#)

STATUS

Case Number

21-2-02771-3

Case Title

WILSON VS PONCE ET ANO

Document Description

NOTICE OF APPEARANCE OF DREW LOMBARDI AND RODNEY UMBERGER RE ON BEHALF OF DEFENDANTS

File Name

Wilson-PENSKE_PONCE -

Ntc_of_Appearance_of_LOMBARDI_UMBERGER.PDF



E-File Documents into an Existing Case

Progress:



Thank you. Your document(s) has been received by the Clerk.

[Click here to submit your Working Copies electronically](#)

[Click here to submit documents to Ex Parte via the Clerk](#)

King County Superior Court Clerk's Office Register for Eservice Confirmation Receipt

You have registered to E-Service for the following case(s):

Case Number	Case Title	Firm ID	Association
21-2-02771-3	WILSON VS PONCE ET ANO		Attorney for Respondent/Defendant

An E-mail will be sent out to each person associated with your account verifying that he/she would like to receive electronic service.

King County Superior Court Clerk's Office EFiling Confirmation Receipt

Case Number: 21-2-02771-3 **Case Designation:** SEA

Case Title: WILSON VS PONCE ET ANO

Filed By: Drew Lombardi **Submitted Date/Time:** 3/17/2021 3:04:32 PM

Received Date/Time: 3/17/2021 3:04:32 PM

User ID: DLombardi **WSBA #:** 56997

Document Type	File Name	Attachment(s)	Cost
NOTICE OF APPEARANCE OF DREW LOMBARDI AND RODNEY UMBERGER	Wilson-PENSKE_PONCE - Ntc_of_Appearance_of_LOMBARDI_UMBERGER.PDF		0.00

RE ON BEHALF OF DEFENDANTS		
----------------------------------	--	--

Save Confirmation Receipt

Printer Friendly Version

Next (E-Serve document)

Build: E-Filing 4.1.8 - 2/24/2021 10:31:23 AM
Environment: PROD

[Home](#) | [Privacy](#) | [Accessibility](#) | [Terms of use](#) | [Search](#)

Links to external sites do not constitute endorsements by King County. By visiting this and other King County web pages, you expressly agree to be bound by terms and conditions of the site.

© 2021 King County



Dept of Judicial Administration – E-Filing

Superior Court Clerk's Office

Welcome Drew Lombardi

[Home](#)
[E-Filing](#)
[E-Service](#)
[My Cases](#)
[Sign Out](#)

INSTRUCTIONS

- ▶ Save or print this confirmation receipt for your file
- ▶ To e-file proof of service, click on E-File Certificate
- ▶ [help](#)

Please do not use your browser's 'Back' button

[start over](#)



E-Serve Documents

E-Service Confirmation

Case Number: 21-2-02771-3

Case Title: WILSON VS PONCE ET ANO

E-Service Date: 3/17/2021 3:08:24 PM

E-Served By: Drew Lombardi

Documents Selected To E-Serve

E-Filed Document(s)

Filed Date

NOTICE OF APPEARANCE OF DREW LOMBARDI
AND RODNEY UMBERGER RE ON BEHALF OF
DEFENDANTS

3/17/2021 3:04:32 PM

Parties E-Served

Name

Association To Case

JD Smith

Attorney for Petitioner/Plaintiff

[Confirmation of E-Service](#)

[E-File Certificate of E-Service](#)

Build: E-Filing 4.1.8 - 2/24/2021 10:31:23 AM
Environment: PROD

[Home](#) | [Privacy](#) | [Accessibility](#) | [Terms of use](#) | [Search](#)

Links to external sites do not constitute endorsements by King County. By visiting this and other King County web pages, you expressly agree to be bound by terms and conditions of the site.

© 2021 King County

Honorable Samuel Chung
Trial Date: February 28, 2022

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PRESTON WILSON, an individual,

Plaintiff,

v.

GERARDO PONCE and JANE/JOHN DOE
PONCE, individually and as a marital
community; and PENSKE TRUCK LEASING
CO., LP., OF WASHINGTON, a foreign
limited partnership,

Defendants.

NO. 21-2-02771-3SEA

ANSWER OF DEFENDANTS GERARDO
PONCE AND "JANE DOE" PONCE, AND
PENSKE TRUCK LEASING CO., L.P., OF
WASHINGTON TO PLAINTIFF'S
COMPLAINT FOR DAMAGES

Defendants Gerardo Ponce; "Jane Doe" Ponce; and Penske Truck Leasing Co., L.P., of
Washington (collectively, "Defendants"), by and through their attorneys, Williams, Kastner &
Gibbs PLLC, answer Plaintiff's Complaint for Damages ("Complaint") as follows:

1. In response to the allegations contained in paragraph 1.1 of the Complaint,
Defendants state that the phrase "at all relevant times" is vague and unclear as to time, location,
and context, and therefore Defendants deny the allegations in paragraph 1.1. To the extent a
further response is required, Defendants are without knowledge or information sufficient to
form a belief as to the truth of those allegations and therefore deny the same.

ANSWER OF DEFENDANTS GERARDO PONCE AND "JANE DOE"
PONCE, AND PENSKE TRUCK LEASING CO., L.P., OF WASHINGTON
TO PLAINTIFF'S COMPLAINT FOR DAMAGES - 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356651.1

2. In response to the allegations contained in paragraph 1.2 of the Complaint, Defendants state that the phrase “Gerardo Ponce...was a resident of Bethany, Oklahoma County, Oklahoma” is vague and confusing with respect to timeframe, and therefore deny the same. To the extent a further response is required, Defendants state that Mr. Ponce is married and is a resident of Bethany, Oklahoma.

3. Defendants admit the allegations contained in paragraph 1.3 of the Complaint.

4. The allegations contained in paragraph 1.4 of the Complaint are legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants admit that the subject accident occurred in Seattle, in King County. To the extent a further response is required, Defendants deny that jurisdiction and venue are proper in this Court.

5. In response to the allegations contained in paragraph 2.1 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same.

6. In response to the allegations contained in paragraph 2.2 of the Complaint, Defendants admit that Mr. Ponce was driving a Penske truck westbound on S. Michigan Street. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2.2 and therefore deny the same.

7. In response to the allegations contained in paragraph 2.3 of the Complaint, Defendants state that Mr. Ponce maneuvered the moving truck to avoid leaving the back end of the truck in the intersection, and that a screw on one of the truck’s steps scratched the rear of Plaintiff’s vehicle.

8. The allegations contained in paragraph 2.4 of the Complaint are legal conclusions to which no responsive pleading is required. To the extent a response is required,

ANSWER OF DEFENDANTS GERARDO PONCE AND “JANE DOE”
PONCE, AND PENSKE TRUCK LEASING CO., L.P., OF WASHINGTON
TO PLAINTIFF’S COMPLAINT FOR DAMAGES - 2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356651.1

1 Defendants admit that Penske Truck Leasing Co., L.P., of Washington owned the vehicle
2 leased to Mr. Ponce. Defendants deny the remaining allegations in paragraph 2.4.

3 9. The allegations contained in paragraph 2.5 of the Complaint are legal
4 conclusions to which no responsive pleading is required. To the extent a response is required,
5 Defendants deny that Plaintiff Preston Wilson was injured in the subject accident.

6 10. The allegations contained in paragraph 2.4 [*sic*] of the Complaint are legal
7 conclusions to which no responsive pleading is required. To the extent a response is required,
8 Defendants are without knowledge or information sufficient to form a belief as to the truth of
9 the allegations and therefore deny the same.

10 11. The allegations contained in paragraph 3.1 of the Complaint are legal
11 conclusions to which no responsive pleading is required. To the extent a response is required,
12 Defendants acknowledge that all drivers have a duty to obey the rules of the road pursuant to
13 RCW 46.61 *et seq.*

14 12. The allegations contained in paragraph 3.2 of the Complaint are legal
15 conclusions to which no responsive pleading is required. To the extent a response is required,
16 Defendants deny the same.

17 13. The allegations contained in paragraph 3.3 of the Complaint are legal
18 conclusions to which no responsive pleading is required. To the extent a response is required,
19 Defendants deny the same.

20 14. The allegations contained in paragraph 3.3 [*sic*] of the Complaint are legal
21 conclusions to which no responsive pleading is required. To the extent a response is required,
22 Defendants deny the same.

23 15. The allegations contained in paragraph 4.1 of the Complaint are legal
24 conclusions to which no responsive pleading is required. To the extent a response is required,
25

ANSWER OF DEFENDANTS GERARDO PONCE AND "JANE DOE"
PONCE, AND PENSKE TRUCK LEASING CO., L.P., OF WASHINGTON
TO PLAINTIFF'S COMPLAINT FOR DAMAGES - 3

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356651.1

1 Defendants acknowledge the doctrine of joint and several liability. Defendants deny the
2 remaining allegations in paragraph 4.1

3 16. The allegations contained in paragraph 5.1 of the Complaint are legal
4 conclusions to which no responsive pleading is required. To the extent a response is required,
5 Defendants deny the same.

6 17. In response to the allegations contained in paragraph 5.2 of the Complaint,
7 Defendants deny that Plaintiff Preston Wilson was injured in the subject accident and therefore
8 that he required medical treatment as a result of the accident.

9 18. The allegations contained in paragraph 5.3 (including subparts 5.3.1(a)-(d) –
10 5.3.2(a)-(g)) are legal conclusions to which no responsive pleading is required. To the extent a
11 response is required, Defendants deny the same.

12 19. Defendants deny each and every one of Plaintiff's prayers for relief.

13 **AFFIRMATIVE DEFENSES**

14 By way of further answer, and as affirmative defenses to Plaintiff's Complaint,
15 Defendants allege as follows:

16 1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
17 2. Plaintiff's damages were caused by Plaintiff's own negligence.
18 3. Plaintiff may have failed to mitigate his alleged damages.
19 4. Plaintiff's claims may be barred by the statute of limitations, statute of repose,
20 or are otherwise untimely.

21 5. Entities and/or persons other than Defendants may be responsible for damages
22 claimed in this case by Plaintiff. In that event, fault should be allocated to these other entities
23 and/or persons pursuant to RCW 4.22 *et seq.* These potentially at-fault entities or persons are
24 the Plaintiff and/or others unknown and unnamed and over whom Defendants had no control.

25
ANSWER OF DEFENDANTS GERARDO PONCE AND "JANE DOE"
PONCE, AND PENSKE TRUCK LEASING CO., L.P., OF WASHINGTON
TO PLAINTIFF'S COMPLAINT FOR DAMAGES - 4

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356651.1

1 Defendants reserve the right to identify additional entities or persons as they become known
2 through discovery.

3 6. The liability of Defendants, if any, was secondary, passive, and subordinate to
4 the primary, active, and causative negligent acts and/or omissions of other entities, for which
5 Defendants are not liable and/or are entitled to indemnification from such other entities.

6 7. Plaintiff's damages, if any, were proximately caused by one or more
7 unforeseeable, independent, intervening, or superseding events beyond Defendants' control,
8 and unrelated to any conduct of Defendants. Any actions or omissions of Defendants were
9 superseded by the negligence and wrongful conduct of others.

10 8. Plaintiff's damages were proximately caused by unavoidable accident, and
11 therefore Defendants are not liable for Plaintiff's damages.

12 9. Plaintiff's damages may be the result of their pre-existing bodily injuries and/or
13 conditions.

14 10. To the extent that any damages that Plaintiff may have sustained have been
15 subject to compensation by collateral sources, any recovery to which Plaintiff might otherwise
16 be entitled must be accordingly barred or reduced thereby.

17 11. Plaintiff's Complaint alleges improper venue and/or jurisdiction.

18 12. To the extent Plaintiff has released, settled, or otherwise compromised his
19 claims, in whole or in part, his claims may be barred by operation of law, or alternatively,
20 subject to reduction by way of set-off.

21 FURTHER ANSWERING PLAINTIFF'S COMPLAINT, Defendants hereby
22 specifically reserve the right to amend this answer by way of adding additional affirmative
23 defenses, counterclaims, or by instituting Third Party Actions, as additional facts are obtained
24 through future investigation and discovery.

25
ANSWER OF DEFENDANTS GERARDO PONCE AND "JANE DOE"
PONCE, AND PENSKE TRUCK LEASING CO., L.P., OF WASHINGTON
TO PLAINTIFF'S COMPLAINT FOR DAMAGES - 5

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356651.1

PRAYER FOR RELIEF

WHEREFORE, having answered Plaintiff's Complaint and asserted their defenses, Defendants request the following relief:

a. That judgment be entered indicating that Plaintiff shall take nothing by way of this Complaint, and that Plaintiff's claims be dismissed with prejudice;

b. That in the event Plaintiff is entitled to any recovery as alleged in the Complaint, that amount of said recovery will be reduced in accordance with the affirmative defenses pled herein;

c. That any recovery to which Plaintiff may be entitled will be allocated or apportioned among parties and nonparties pursuant to Washington law;

d. That Defendants be awarded costs and reasonable attorneys' fees allowed by law and equity; and

e. That Defendants be awarded such other and further relief as the Court deems just and reasonable.

DATED this 23rd day of March, 2021.

WILLIAMS, KASTNER & GIBBS PLLC

/s/ Drew. V. Lombardi, WSBA #56997
Rodney L. Umberger, WSBA #24948
Drew. V. Lombardi, WSBA #56997
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: (206) 628-6600
Email: rumberger@williamskastner.com
dlombardi@williamskastner.com

*Attorneys for Defendants Gerardo Ponce and
"Jane Doe" Ponce, and Penske Truck Leasing
Co., L.P. Of Washington*

ANSWER OF DEFENDANTS GERARDO PONCE AND "JANE DOE"
PONCE, AND PENSKE TRUCK LEASING CO., L.P., OF WASHINGTON
TO PLAINTIFF'S COMPLAINT FOR DAMAGES - 6

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356651.1

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 23rd day of March, 2021, I electronically filed the foregoing with the Clerk of the Court using the King County E-Filing system.

Further, I hereby certify under penalty of perjury under the laws of the State of Washington that on the 23rd day of March, 2021, I caused a true and correct copy of the foregoing document, to be delivered to the following counsel of record in the manner noted below:

J.D. Smith, WSBA #28246 Law Office of J.D. Smith, PLLC 8015 SE 28th Street, Suite #212 Mercer Island, WA 98040 Telephone: (206) 588-8529 Email: JD@JDSmithLaw.com <i>Attorneys for Plaintiff Preston Wilson</i>	SENT VIA: <input checked="" type="checkbox"/> E-File/E-Serve <input type="checkbox"/> Regular U.S. Mail <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Email
--	--

DATED this 23rd day of March, 2021.

/s/ Dena S. Levitin, Legal Assistant
Dena S. Levitin, Legal Assistant
on behalf of Drew V. Lombardi
and Rodney L. Umberger

ANSWER OF DEFENDANTS GERARDO PONCE AND "JANE DOE"
PONCE, AND PENSKE TRUCK LEASING CO., L.P., OF WASHINGTON
TO PLAINTIFF'S COMPLAINT FOR DAMAGES - 7

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

7356651.1



HOME NEWS SERVICES DIRECTORY CONTACT

Search

Dept of Judicial Administration – E-Filing

Superior Court Clerk's Office

Welcome Drew Lombardi

[Home](#)[E-Filing](#)[E-Service](#)[My Cases](#)[Sign Out](#)

INSTRUCTIONS

Save or print this confirmation receipt for your file

[help](#)

Please do not use your browser's 'Back' button

[start over](#)

STATUS

Case Number

21-2-02771-3

Case Title

WILSON VS PONCE ET ANO

Document Description

ANSWER OF OF DEFENDANTS
PONCE AND PENSKE

File Name

Wilson-PONCE_PENSKE - FILED
Def's_ ANSWER to Complaint.PDF

E-File Documents into an Existing Case

Progress:



Thank you. Your document(s) has been received by the Clerk.

[Click here to submit your Working Copies electronically](#)

[Click here to submit documents to Ex Parte via the Clerk](#)

King County Superior Court Clerk's Office EFiling Confirmation Receipt

Case Number: 21-2-02771-3

Case Designation: SEA

Case Title: WILSON VS PONCE ET ANO

Filed By: Drew Lombardi

Submitted Date/Time: 3/23/2021
1:01:02 PM

Received Date/Time: 3/23/2021
1:01:02 PM

User ID: DLombardi

WSBA #: 56997

Document Type	File Name	Attachment(s)	Cost
ANSWER OF OF DEFENDANTS PONCE AND PENSKE	Wilson-PONCE_PENSKE - FILED Defs_ ANSWER to Complaint.PDF		0.00

[Save Confirmation Receipt](#)

[Printer Friendly Version](#)

[Next \(E-Serve document\)](#)



Dept of Judicial Administration – E-Filing

Superior Court Clerk's Office

Welcome Drew Lombardi

[Home](#)
[E-Filing](#)
[E-Service](#)
[My Cases](#)
[Sign Out](#)

INSTRUCTIONS

- ▶ Save or print this confirmation receipt for your file
- ▶ To e-file proof of service, click on E-File Certificate
- ▶ [help](#)

Please do not use your browser's 'Back' button

[start over](#)



E-Serve Documents

E-Service Confirmation

Case Number: 21-2-02771-3

Case Title: WILSON VS PONCE ET ANO

E-Service Date: 3/23/2021 1:01:56 PM

E-Served By: Drew Lombardi

Documents Selected To E-Serve

E-Filed Document(s)	Filed Date
ANSWER OF OF DEFENDANTS PONCE AND PENSKE	3/23/2021 1:01:02 PM

Parties E-Served

Name	Association To Case
Drew Lombardi	Attorney for Respondent/Defendant
JD Smith	Attorney for Petitioner/Plaintiff

Confirmation of E-Service

E-File Certificate of E-Service

Build: E-Filing 4.1.8 - 2/24/2021 10:31:23 AM
Environment: PROD

[Home](#) | [Privacy](#) | [Accessibility](#) | [Terms of use](#) | [Search](#)

Links to external sites do not constitute endorsements by King County. By visiting this and other King County web pages, you expressly agree to be bound by terms and conditions of the site.

© 2021 King County